

EXHIBIT M

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DATAMIZE, L.L.C., a Wyoming
limited liability corporation,)

Plaintiff and
Counterclaim-defendant,)

vs.)

PLUMTREE SOFTWARE, INC., a
Delaware corporation,)

Defendants and
Counterclaimant.)

CERTIFIED COPY

CASE NO. C02-5693 VRW

ORAL DEPOSITION OF

JEREMY ROSENBLATT

DALLAS, TEXAS

MAY 13, 2004

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FILE NO.: 9E041CC

1 interface in 1996, would your answer change or would
2 you have that same definition?

3 A My answer would be the same.

4 Q Do you believe that aesthetically pleasing as
5 used more generally in the English language is
6 synonymous with visually attractive or beautiful?

7 A I wouldn't disagree with that statement.

8 Q Would you agree with the statement that as
9 it's generally used and as it's potentially synonymous
10 with beautiful, it's a subjective term?

11 A That depends. Beautiful, you know, we're
12 going from one definition taken somewhat out of context
13 one level removed to another one which if it isn't
14 taken carefully in context ends up with an invalid
15 conclusion. So I'm not certain how I can answer that.

16 Q Is the word beautiful a subjective term?

17 A In certain uses, yes.

18 Q In what uses is it not a subjective term?

19 A There are uses where the predicted result of
20 something being beautiful or highly not beautiful could
21 be tied to objective measures.

22 Q When you say tied by objective -- tied to
23 objective measures, what do you mean?

24 A Certainly in extreme cases you would find
25 that although it may be tempting to refer to it as

1 someone who would be a world class expert, someone who
2 would typify the type of person who would be retained
3 to build such a system.

4 Q Did you have in mind how many years of
5 experience such a person would have?

6 MR. BOVENKAMP: Objection, form.

7 Q (By Mr. Levin) That person, I mean the person
8 of ordinary skill referred to in paragraphs 2 and 4 of
9 your declaration.

10 A They might, depending upon talent levels,
11 have anywhere from one to three years of experience.

12 Q How did you arrive at those numbers?

13 A My own professional experience.

14 Q Would you say that you're a person of
15 ordinary skill in the art, less so or more so?

16 A In this specific area probably slightly more
17 so.

18 Q Paragraph 4 says that you're in the mind-set
19 of somebody in 1997. Why do you use the year 1997?

20 A I wanted to be looking at this in the
21 framework of the time frame in which this patent came
22 into being.

23 Q Are you aware of what the priority date is in
24 this patent? In other words, when they're claiming the
25 application should be deemed filed for purposes of --

1 choices but that they do not teach what design choices
2 are in fact aesthetically pleasing?

3 A Certainly the first half I agree with. Can
4 you repeat the second half?

5 MR. LEVIN: Can you reread it?

6 (The record was read.)

7 THE WITNESS: Yes, that's probably true.

8 Q (By Mr. Levin) So nowhere in the patent does
9 it say what particular color combinations either are or
10 are not aesthetically pleasing?

11 A That is correct.

12 Q Or what button sizes are or are not
13 aesthetically pleasing?

14 A That would be correct.

15 Q Do you know if any of the -- anything in the
16 file history, anything in the cited references or
17 anything else referenced in the patent would teach what
18 design choices would result in an aesthetically
19 pleasing look and feel?

20 MR. BOVENKAMP: Object to form.

21 THE WITNESS: Can you repeat that for
22 me?

23 (The record was read.)

24 THE WITNESS: Clarify what you mean by
25 what design choices, the nature and by whom.

1 referenced in the patent provide design guidelines. So
2 I'll ask you that question. Do any of the materials
3 referenced in the patent or does the patent itself
4 provide any design guidelines?

5 A Yeah, I would say no.

6 Q No. Okay. Could you turn to paragraph 5,
7 please, of your declaration and Footnote 2.

8 A Uh-huh.

9 Q What are the three roles described in the
10 '137 patent that you reference in Footnote 2?

11 A Well, from the footnote it indicates that the
12 person building the authoring system is the system
13 creator. The person using the limited set of elements
14 is referred to as the system author. And the person
15 who ultimately ends up using the kiosk is referred to
16 as either the kiosk user or the end user.

17 Q Why do you draw these three different roles
18 out?

19 A They are -- to some extent some of the --
20 some of that is defined in the patent, and so I drew it
21 from there.

22 Q To what extent is it not defined in the
23 patent?

24 A I would have to go back and reread the
25 patent. It is possible that there is less clear term

1 definition between perhaps the term kiosk user and end
2 user. I would have to look at the patent to see.

3 Q Do you know if the patent uses the phrase
4 system creator anywhere?

5 A I don't know whether it's in there or in the
6 prosecution history or in your motion for summary
7 judgment. It's in there somewhere.

8 Q Is this a term that you just don't recall
9 where you first came upon the term system creator?

10 A No, I don't.

11 Q Do you think it's implicit in the patent
12 though?

13 A That that role exists is implicit in the
14 patent? Yes, I do.

15 Q Okay. Is it important to not collapse these
16 different roles in your analysis of the '137 patent?

17 A In my analysis I felt it was useful to keep
18 them separate. I don't know if it would be important
19 not to collapse them. Would depend upon the context.

20 Q For example, does the specification teach
21 anything about the system creator as the user of the
22 product?

23 A System creator as the user of the product?

24 Q Yes.

25 A I didn't see the system creator as the user.

1 Maybe -- maybe I need a better guidance on the
2 question.

3 Q Just exploring the idea that these are
4 separate roles, and I think is it fair to say there's
5 nothing in the patent that teaches that the system
6 creator is actually going to be using the end product
7 that they created?.

8 A I don't know that.

9 Q You're just not sure without reviewing the
10 patent?

11 A Yeah. If I heard the question --

12 THE WITNESS: Maybe you should read the
13 question back to me. I'll make certain I'm answering
14 it accurately.

15 (The record was read.)

16 THE WITNESS: To exclude that, I would
17 have -- you're asking me to say it does not say that.
18 I'd have to go back and reread the patent.

19 Q (By Mr. Levin) Okay. But as far as you're
20 aware, there's nothing that affirmatively teaches that?

21 A I don't recall anything that affirmatively
22 teaches that.

23 Q Is there anything that you recall that
24 teaches that the kiosk user or end user has the role of
25 the system author in terms of defining the user

1 reading. But I did see column 13 line 7. But this is
2 by hand. Column 11 line 4, but this is by no means an
3 exhaustive annotation.

4 Q What about in column 10?

5 A Column 10. I'm just getting to that. Column
6 10, thumbing backwards here, column 10 line -- looks as
7 if I've marked an area covering from about line 12 to
8 line 14. I think that was because it said in author
9 mode at line 14 to 15. Prior to that I don't think I
10 was marking as I was reading.

11 Q Is it your understanding of the specification
12 that only the system creator has a wide range of
13 choices of what user interface elements can be given to
14 the author to choose?

15 A Yes.

16 Q Is there anything in the specification that
17 or in the patent generally that teaches how much
18 variation is necessary to constitute the limited
19 variation referred to in the claims?

20 A I don't believe so.

21 Q Is it fair to say that any authoring
22 environment is going to have built into the nature of a
23 visual system some limits on the options provided to
24 the user of the tool?

25 A It may or may not enforce limits of its own.

1 declaration. Put that aside for now. As well as
2 paragraph 5 and other parts of this declaration. Could
3 you state your opinion as to who the relevant person is
4 with respect to the question of whether a user
5 interface is aesthetically pleasing as it's used in
6 Claim 1 of the patent?

7 A Yeah, it refers back to the system creator.

8 Q So it's one of your opinions that the
9 question of whether something's aesthetically pleasing
10 is in the eyes of the system creator, not the system
11 author or the end user? Is that correct?

12 A The system creator, yes.

13 Q Now, does the patent require that the system
14 creator find all the user interfaces that can be
15 created with the authoring tool to be in his or her
16 opinion aesthetically pleasing?

17 A No, I don't believe it does.

18 Q Why not?

19 A That it provides a reasonable limitation of
20 the choices they can make in conformance with the
21 creator's view of what is aesthetically pleasing.

22 Q Let's say the creator has a customer whose
23 tastes he disagrees with and creates an authoring tool
24 that where all of the possible choices are in his
25 opinion ugly, though the --